

EXHIBIT I

Simone - dep of Ron Smith

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 TRENTON DIVISION

4 THEODORE KOZIOL and LOIS KOZIOL,
5 Plaintiffs,

6 vs. CIVIL ACTION
7 NO. 00. 1938 (GEB)

8 BOMBARDIER-ROTAX GmbH,
9 BOMBARDIER INC., KODIAK
10 RESEARCH LTD., and ROTECH
11 RESEARCH CANADA LTD a/k/a
12 KODIAK RESEARCH CANADA, LTD.

13 Defendants.

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* * * * *

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16 DEPOSITION OF: RONALD LAVON SMITH
17 DATE: Tuesday, December 3, 2002
18 TIME: 12:49 p.m.
19 PLACE: The Reporting Company
20 201 North Magnolia Avenue
21 Orlando, Florida
22 REPORTED BY: PAULA J. LEEPER
Court Reporter, Notary Public

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APPEARANCES:

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SMITH, HOOD, PERKINS, LOUCKS,
STOUT & ORFINGER, P.A.
444 Seabreeze Boulevard, Suite 900
Daytona Beach, Florida 32118
Attorneys for the Plaintiffs
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TRANSCRIPT OF PROCEEDINGS

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Deposition held December 3, 2002

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TESTIMONY OF RONALD LAVON SMITH

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Direct Examination by Mr. Perkins

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CERTIFICATE OF OATH

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CERTIFICATE OF REPORTER

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SUBSCRIPTION OF DEPONENT/ERRATA SHEET

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Composite Exhibit A

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1 WHEREUPON:

2 The following proceedings were held:

3 RONALD LAVON SMITH,

4 a witness herein, after having been first duly sworn,

5 was examined and testified as follows:

6 BY MR. PERKINS:

7 Q Tell us your full name, please.

8 A Ronald Lavon Smith.

9 Q Mr. Smith, what do you do?

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10 A Well, I'm employed, self-employed, with
11 South Mississippi Light Aircraft.

12 Q And what business does South Mississippi
13 Light Aircraft do?

14 A It supports the small plane, ultralight
15 industry, and representing the Rotax aircraft engine,
16 sales of parts, engines, repairs, overhauls.

17 Q Are you yourself a pilot?

18 A Yes, sir.

19 Q Are you also an ultralight pilot?

20 A Yes, sir.

21 Q Is that what got you into that?

22 A Well, to some degree. Daddy flew, and he
23 had four other -- three other brothers, and he taught
24 us all to fly, unofficially, on the farm. We were
25 sort of raised up in aviation, small part of it. And

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1 he is actually the one that got us interested in the
2 ultralight stuff in 1979. And he bought the first --
3 bought Weed Hopper at that time.

4 Q So you've been involved in ultralights

5 Simone - dep of Ron Smith
6 since 1979?

7 A Correct.

8 Q How long have you been involved with Rotax
9 engines?

10 A I come associated as being a -- what they
11 call a service center somewhere along about '87, '88.
12 It was a year or so after Phil become a service
13 center. That's when I become one.

14 Q What did you have to do to become a
15 service center for Rotax?

16 A I guess you could say I had been at the
17 right place at the right time. I had requested to go
18 to school at -- I was a distributor for Quicksilver
19 Aircraft, Quicksilver Enterprises originally. And
20 they wanted -- wanted someone to be more officially
21 representing the industry -- to do the engine work
22 and stuff in our area, too.

23 And so I requested to go to school. At
24 that time we went to Vernon Bridge, Columbia to go to
25 the Rotax engine school when Ron Shetler still had
26 the distribution rights at that point. Well, I say

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16 as to how Rotax -- their distribution, and we was
17 listed under Kodiak Research as one of their service
18 centers.

19 Q Is your understanding that to be a -- a
20 Rotax dealer, in the Rotax system, they are called
21 service centers?

22 A Well, you have -- we have a -- we have a
23 service center for Kodiak Research for the Rotax
24 aircraft engine.

25 Q Okay. Is that being a dealer for Rotax

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1 engines?

2 A We had the Kodiak -- well, when you say a
3 dealer, we're a service center which sells complete
4 engines, does engine work, sells parts, and supports
5 that part of the industry.

6 Q All right. Does the service centers for
7 the Rotax engines in the United States have the
8 exclusive right to sell the new Rotax engines to the
9 general public?

10 A Well, we had the exclusive right to sell

Simone - dep of Ron Smith
11 the Rotax aircraft engine. I say exclusive rights.
12 I mean, I don't have no contract or anything that
13 says I'm a service center, as far as that goes. We
14 ain't -- we don't have no contract or nothing signed.
15 Q South Mississippi Light Aircraft, is that
16 a corporation?

17 A Yes, it is.

18 Q A Mississippi corporation?

19 A Correct.

20 Q And how long has that been in operation?

21 A Late '80s, I think is when we incorporated
22 it.

23 Q Mr. Smith, are you the principal of that
24 operation?

25 A That's correct.

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1 Q And the president of that corporation.

2 A Yes.

3 Q And you would be the one in charge of the
4 day-to-day business.

5 A Correct.

6 Q Does that corporation -- with regard to

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2 Q Okay. And what will -- Wet Trike,

3 T-R-I-K-E?

4 A Yeah. It will just be an OEM.

5 Q And so what's going to happen with that is
6 you're going to be able to get Rotax engines directly
7 from Kodiak to incorporate into that kit?

8 A If I met their volume quota, I would be.
9 But as it is, as South Mississippi Light Aircraft,
10 and all of the other service centers, we supply the
11 small OEMs that can't meet the volume with that.

12 So all of that stuff would come through
13 South Mississippi Light Aircraft. They would
14 purchase from South Mississippi Light Aircraft, same
15 as I sell to any of the other small EOMs.

16 Q Okay. I understand how that works.

17 Does South Mississippi Light Aircraft have
18 any written agreement with anybody concerning the
19 sale, servicing, warranty, repair, support, anything
20 of Rotax engines?

21 A Negative.

22 Q So everything you have is verbal.

23 A (Witness nods head.)

24 Q Yes?

25 A That's correct.

17 Simone - dep of Ron Smith
liability issue, you think?

18 A I couldn't say which one would be greater.

19 Q Okay.

20 A Because I would be just strictly
21 stipulating if I said one or the other.

22 Q Now, with regard to the purchase of a
23 Rotax engine, does all of the dealing of South
24 Mississippi Light Aircraft and all of your dealing
25 done through Kodiak Research?

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1 A That's correct.

2 Q Any time you want a new engine, you have
3 to go there.

4 A That's correct.

5 Q Have you ever had any dealings with the
6 factory, with Rotax directly?

7 A Negative.

8 Q None at all?

9 A Not on official, as far as ordering or
10 anything, we have no contact with the factory.

11 Q How about unofficial?

12 A I've met some of the -- some of the

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13 factory folks. I have been to the factory.

14 Q Okay. When did you visit the factory?

15 A The last time we visited the factory was
16 in '93.

17 Q Was this an arranged tour or a meeting?

18 A It was an arranged tour, and we went in
19 capacity with Kodiak Research as our -- their service
20 centers to tour the factory, and to be brought up to
21 speed currently at that time on a new -- on the 912
22 engine.

23 Q And who did you meet at the factory?

24 A Well, Joe -- Josef Furlinger would be one
25 that I can remember. The other -- the other name

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1 that comes to mind is Wolfgang. I don't remember if
2 that's his first name or last name. I'm sure that I
3 met other folks, but that's the only two that I can
4 recall names of.

5 Q All right. Now, as I understand it, in
6 '93 Kodiak sponsored a trip to the factory for the --
7 its service centers. Is that -- do I have that

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14 Q And how about on the numbers, whether or
15 not you thought you could improve the number of
16 sales?

17 A Not that I can recall.

18 Q Do you have meetings where those types of
19 items are discussed?

20 A The service centers do.

21 Q And how do they do that?

22 A We normally have a service center meeting
23 in the Bahamas.

24 Q Okay. And when is that done? Is that the
25 April meeting?

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1 A Generally in April. It's after Sun 'n
2 Fun.

3 Q And is that done at the Kodiak facility,
4 or where is that done in the Bahamas?

5 A Well, it's -- we've actually been a couple
6 of places over there. It's -- the last time in
7 April, we met at the executive airport in a meeting
8 room.

9 Q Okay. Have you ever made suggestions

8 Simone - dep of Ron Smith
out?

9 A Correct.

10 Q How about when they came out with the 914
11 turbo? They have any kind of official announcement
12 of the new product?

13 A Rotax didn't.

14 Q Did you?

15 A Most of the service centers, depending on
16 where you was advertising, or if you had any
17 advertising, it was just listed under some --
18 listed -- now, we tried -- you know, when we went to
19 the shows, tried to have the latest and newest engine
20 there on display when we went to the trade shows, Sun
21 'n Fun and Oshkosh.

22 Q Do you advertise under South Mississippi
23 Light Aircraft?

24 A Yes.

25 Q All right. Is any of your advertisement

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1 paid for by Rotax or --

2 A Negative.

3 Q -- Kodiak?

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4 A Negative.

5 Q Is it coordinated in any way with Rotax or
6 Kodiak?

7 A Only the -- the only coordination that
8 they have is stipulations and on how to use the logo.

9 Q The -- the orange box Rotax logo?

10 A Yeah.

11 Q What stipulations or restrictions?

12 A Well, they tell us which one that we can
13 use and how we have to use it.

14 Q How do you get the logo?

15 A I don't remember where we -- I think
16 the -- most of the times they would cover that when
17 we was at a -- one of the meetings over in the
18 Bahamas, or service center meetings would be under
19 one of those topics that we would either say this is
20 the logo that you can use now, or you can't use this
21 one anymore at that point in time.

22 Q Do you get written materials when you go
23 to the -- this meeting in the Bahamas?

24 A We get an agenda.

25 Q And --

5 Q Simone - dep of Ron Smith
 So warranty parts for uncertified?

6 A Uncertified.

7 Q Uncertified. Okay.

8 All right. How are warranty claims
9 handled through your company?

10 A With a warranty claim form.

11 Q And that is a form prepared by who?

12 A Kodiak Research.

13 Q Do you have blank forms there at your
14 business?

15 A Yes, sir.

16 Q And you submit that to whom?

17 A To Eric Tucker.

18 Q At Kodiak?

19 A At Kodiak, at the present time. Now, used
20 to that it was all -- all the warranty stuff was
21 handled in Canada.

22 Q Have you received any training or
23 information about how you're supposed to process
24 warranty claims?

25 A Well, other than just fill out all the

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1 blanks and furnish the serial number and the hours
2 and stuff on the engine.

3 Q Do you make an initial assessment on
4 whether it's a warranty claim or not?

5 A Well, the service center would make the
6 initial assessment whether his thoughts would be --
7 whether it would be covered under warranty or not.

8 Q Do you have any guidelines that you're
9 supposed to follow to determine whether it's a
10 warranty claim or not?

11 A No.

12 Q Are there written materials of any kind
13 provided by Rotax or Kodiak regarding the process of
14 warranty claims?

15 A Not other than just a stipulation of time
16 frame, what the warranty -- time frame that the
17 warranty is, would normally cover of the engine.

18 Q And that's in the owner's manual?

19 A I don't know if it's listed in the owner's
20 manual or not.

21 Q Okay. Are there other documents that they
22 provide to you that list the time period for making
23 warranty claims?

24 A Not -- other than what I received at the

Simone - dep of Ron Smith
20 All right. Now, with regard to service
21 bulletins, from time to time, were there service
22 bulletins issued for Rotax engines?
23 A Yes, sir.
24 Q Where do they come from?
25 A From Kodiak Research.

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1 Q Do you know who actually prepared the
2 service bulletins?
3 A No. I mean, I don't know. Eric could
4 have prepared some of it. Some of the guys in Canada
5 could have prepared it, I don't know specifically.
6 They don't say.
7 Q Since the service centers were involved in
8 doing the maintenance and warranty work, did you, as
9 the owner of one of the service centers, have any
10 input into the preparation of service bulletins?
11 A Negative. No, we didn't. South
12 Mississippi didn't. I can't speak for the other
13 ones.
14 Q Did you have any dealings with the
15 manufacturer at all regarding any of the service

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16 bulletins?

17 A Manufacturer being?

18 Q Rotax.

19 A No, sir.

20 Q Was it your understanding that Rotax was
21 involved in issuing the required service bulletins?

22 A That, I don't know.

23 Q Did Rotax delegate to Kodiak any legal
24 responsibilities, to your knowledge, for supporting
25 the product?

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1 A Not that I'm aware of.

2 Q Did Kodiak -- strike that.

3 Did Rotax manufacture the engines that you
4 sold?

5 A As far as I know.

6 Q Did Kodiak manufacture any of the engines?

7 A Not that I'm aware of.

8 Q Did they manufacture any of the parts that
9 were put on the engines that you sold?

10 A Not that I'm aware of.

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1 that?

2 A It was credited to my account.

3 Q Okay. How much of an incentive was
4 provided in that fashion?

5 A In what respect?

6 Q Dollars or percentage.

7 A It could be anywhere from five hundred
8 dollars to five thousand dollars, depending on where
9 you was at, depending on how many points you
10 received.

11 Q Depending on how well you achieved the
12 incentives that they put out there?

13 A Correct.

14 Q And that was put as a credit towards
15 future purchases?

16 A If you had a zero account.

17 Q If you had a zero account, they would give
18 you money back?

19 A Supposedly. I don't know.

20 Q In the number of times -- or in the years
21 that you've been involved with Rotax engines, have

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22 you ever received a check from Rotax?

23 A Negative.

24 Q All of the checks have been through --

25 A I have not received a check from any of

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1 them.

2 Q Okay. Have you ever received a credit
3 from Rotax?

4 A Negative.

5 Q Are there any restrictions on your ability
6 to sell Rotax engines in the United States?

7 A Any restrictions?

8 Q Yeah, placed on you by Rotax or by Kodiak?

9 A Well, retail sales we can sell anywhere.

10 Q All right. So, for instance, you brought
11 with you copies of invoices of sales to New Jersey,
12 even though you're in Mississippi. So there's no
13 geographic limitation on a service center's right to
14 sell Rotax engines?

15 A No, sir.

16 Q Are there any restrictions, that you're

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, PAULA J. LEEPER, Court Reporter and
Notary Public for the State of Florida at Large, do
hereby certify that I was authorized to and did
stenographically report the foregoing deposition, and
that said transcript is a true record of the
testimony given by the witness.

I FURTHER CERTIFY that I am not of counsel
for, related to, or employed by any of the parties or
attorneys involved herein, nor am I financially
interested in said action.

DATED this 31st day of December, 2002.

PAULA J. LEEPER

14 Simone - dep of Ron Smith
Court Reporter, Notary Public

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1 E R R A T A

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20 I, RONALD LAVON SMITH having read my
21 deposition in this matter taken December 3, 2002, by
22 Paula J. Leeper, Court Reporter, entered any changes
23 in form or substance as reflected above.

22

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24 Date

RONALD LAVON SMITH

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